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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976.

No. 76-1215

UNITED STATES OF AMERICA,
Respondent,

vs.

ROBERT JACOBS,
Petitioner.

BRIEF AMICUS CURIAE OF JOINT COUNCIL 25, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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The parties having given their consent, this brief is filed pursuant to Rule 42.1.

INTEREST OF THE AMICUS CURIAE.

Joint Council 25, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter JC 25) is a central labor body representing 155,000 members constituted in 29 separate local unions all located within the Seventh Judicial Circuit. It has a vital interest in the Seventh Circuit's sweeping extension of the Hobbs Act, 18 U. S. C. § 1951, since the touchstone for a valid Hobbs Act indictment under *Jacobs* is not an extortionate object but the number of members which the union represents.

REASONS FOR GRANTING THE WRIT.

I. The Decision Below Conflicts With Enmons Because Regardless of the Number of Employees Represented by the Union the Threatened Use of Force to Achieve Recognition as Exclusive Bargaining Representative Is Not a Violation of the Hobbs Act.

The Seventh Circuit in *Jacobs* has extended the Hobbs Act to alleged threats of force by a union agent to obtain the lawful object of exclusive recognition if the union does not represent a majority of the threatened employer's employees. In examining the Hobbs Act the court used the wrong end of the microscope. It focused not on the object of the conduct but on the number of employees who support the union.

In an effort to distinguish *United States* v. *Enmons*, 410 U. S. 396 (1973), the court theorized:

> Presumably a demand for recognition, on behalf of a union authorized to represent the majority of employees albeit at gun point, cannot under *Enmons* violate the Hobbs Act. We think the same demand on behalf of a union which does not have authority to represent any of them could violate it.

This Court in *Enmons* made no such distinction. This Court's test is whether the goal of the union is legitimate, *viz.*, to obtain recognition and a collective bargaining agreement rather than to obtain personal payoffs.

If the court below is simply saying that personal payoffs violate the Hobbs Act, there is no reason for the comment that "the same demand on behalf of a union which does not have authority to represent any [employees] . . . *could* violate it." The court gives no clue as to either the circumstances which convert "could" to "will" or the basis for this judicial extension of the reach of the Hobbs Act.

In *Enmons*, this Court emphasized that " 'wrongful' " has meaning in the Act only if it limits the statute's coverage to those instances where the obtaining of the property would itself be wrongful because the alleged extortionist "has no lawful claim to that property" (410 U. S. at 400). Further amplifying this point, this Court explained: "where a union uses violence to achieve legitimate union objectives, such as higher wages in return for genuine services which the employer seeks . . . there has been no 'wrongful' taking of the employer's property; he has paid for the services he has bargained for . . ." (*Id.* at 400).

Jacobs was charged with attempting to force certain employers to sign a lawful union contract calling for, *inter alia*, recognition, payment of wages and fringe benefits. Jacobs' *object* was legitimate because it is not claimed he sought payoffs or that the employer would have paid for fictitious services.

Jacobs' object was the same as the union in *Enmons*, *i.e.*, to force the employer to sign the contract. In *Enmons*, the Court rejected the government's argument that the use of certain type of force could convert a lawful object to an unlawful one. If the degree of force cannot be the criterion, it follows that the number of employees which the union represents is an equally invalid standard. The legality of a defendant's object cannot depend on whether the union represents 51% of the employees, 30% of the employees, or no employees. In each circumstance, all that is sought is the lawful object of requiring the employer to sign a contract. Mister Justice Blackmun's advice in his concurring opinion in *Enmons* should indeed be heeded:

> The Government's posture, with its concession that certain strike violence (which it would downgrade to incidental) . . . although aimed at achieving a legitimate end, is not covered by the Act, necessarily means that the legislation would be enforced selectively or, at the least, would embroil all concerned with drawing the distinction between major and minor violence. That, for me, is neither an appealing prospect nor solid support for the position taken.
>
> *Id.* at 412.

If the court's opinion means that the finding of a violation depends on the number of employees which the union represents, all federal courts will be embroiled in a quagmire ill-suited for the federal criminal statutes. The NLRB has a most difficult time in determining a union's majority status, *viz.*, are the authorization cards valid; have the cards been revoked, or procured by misrepresentation? Putting aside authorization cards, how will the court determine the delicate question of the appropriate bargaining unit which has long troubled the NLRB? Are clerical employees to be considered part of the unit? Are truck drivers to be deemed a separate unit? What is the status of persons claimed to be supervisors? If the decision below is permitted to stand courts will have to conduct a representation hearing as part of a federal criminal trial.[1]

Our concern with the *Jacobs* distinction between majority and non majority support is comparable to Mister Justice Blackmun's concern between major and minor violence. We suggest that Mister Justice Blackmun's rationale in *Enmons* is equally applicable here:

> Even if the language and history of the Act was less clear than we have found them to be, the Act could not properly be expanded as the Government suggests—for two related reasons. First, this being a criminal statute it must be strictly construed, any ambiguity must be resolved in favor of lenity.
>
> Secondly, it would require statutory language much more explicit than that before us here to lead to the conclusion that Congress intended to put the Federal Government in the business of policing the orderly conduct of strikes. Neither the language of the Hobbs Act nor its legislative history can justify the conclusion that Congress intended to work such an unprecedented excursion into the criminal jurisdiction of the State.
>
> *Id.* at 417.

1. In *NLRB* v. *Weingarten, Inc.*, 420 U. S. 251, 267 (1975), this Court re-emphasized that the Board has the "special function [of] applying the general provisions of the Act to the complexities of industrial life . . . and its special competence in this field is the justification for the deference accorded its determination." Lower courts too have steadily expressed deference for NLRB expertise in these areas, *e.g.* "Initially, the responsibility lies with the Board, and its determination, unless illogical or arbitrary ought not to be disturbed," *NLRB* v. *Thor Power Tool Co.*, 351 F. 2d 584 (7th Cir. 1965); "the Board must draw the line between protected and unprotected behavior," *NLRB* v. *Ben Pekin*, 452 F. 2d 205 (7th Cir. 1971).

II. The Circuit Court's Decision Could Hold Countless Employers and Unions Subject to the Hobbs Act Violations for Engaging in Unfair Labor Practices.

The National Labor Relations Act, as amended, demonstrates that Congress was concerned that unions be the true majority representatives of employees and that employers not assist unions in obtaining such status. It is not enough that a union demonstrate its majority status; the NLRA requires that such majority status be legally obtained otherwise the employer violates § 8(a)(2), 29 U. S. C. § 158(a)(2), and the union violates § 8(b)(1)(A), 29 U. S. C. § 158(b)(1)(A). *Garment Workers Union* v. *NLRB*, 366 U. S. 731.[2]

However, while regulating contracts with minority unions, Congress continued to recognize that peaceful picketing of an employer by a minority or non-representative union was a legitimate union object which is beyond any regulation for a reasonable period not to exceed 30 days, and remains beyond regulation if a representation petition is filed. 29 U. S. C. § 158 (b)(7)(C), Cox, *The Landrum-Griffin Amendments to the National Labor Relations Act*, 44 Minn. L. Rev. 257, 265-70 (1959), see also *NLRB* v. *Teamsters Local* 639, 632 U. S. 274.

2. Congress has given the NLRB authority in this area. The Board has long dealt with the problems of minority unions or majority unions which use force to obtain lawful objectives. In 1972, 328 unfair labor practice charges were filed alleging 8(a)(2) violations. *Thirty-Seventh Annual Report of the NLRB* at 225. While each charge obviously did not result in the issuance of a complaint, it is apparent that 8(a)(2) illegal assistance allegations are substantial. For remedial purposes, where the majority status of the union is tainted the union has no legal right to represent the employees and monies which were deducted from the employees wages through dues check-off are refunded.

While the proposition seemed well settled that so long as the object of conduct is legitimate violence does not convert it to a federal crime, *Enmons, supra; United States* v. *DeLaurentis,* 491 F. 2d 208 (2nd Cir. 1974); *United States* v. *Caldes,* 457 F. 2d 74 (9th Cir. 1972); *United States* v. *Bailes,* 120 F. Supp. 614 (S. D. W. Va. 1954), the effect of the decision in *Jacobs* is to convert an unfair labor practice, or a mistake as to the number of employees in, or what is, an appropriate bargaining unit, into a federal crime. Such a decision must not be permitted to stand.

CONCLUSION.

The use of force or threats of force in seeking to organize employees is not to be condoned. It was and is subject to state criminal jurisdiction and NLRB regulation. The organizing of employees, even if accompanied by violence, however, is a legitimate end. Where the end is legitimate the Hobbs Act has no place in the Congressional scheme. Federal criminal statutes are not to be used to satiate one's moral indignation over the choice of method where the end is conceded to be legitimate. This Court should grant certiorari.

Respectfully submitted,

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